

**§ 159I-13. Sources and security for units of local government.**

(a) The source or sources of and the security for payment of each loan agreement shall be determined by the governing body of such unit of local government and shall be set forth in the loan agreement.

(b) In the event that, under the provisions of The Local Government Bond Act a bond order authorizing the issuance of bonds that pledge the faith and credit of a unit of local government, that is otherwise authorized to issue bonds under the act, for the purpose of providing funds for one or more purposes that constitute eligible projects within the meaning of this Chapter has taken effect, then, in lieu of issuing any bonds authorized or any bond anticipation note in anticipation of such bonds, but not sold and delivered pursuant to such order, the governing body of any unit of local government may enter into a loan agreement authorized by this Chapter and may pledge the faith and credit of such unit to secure its obligation to make the payments required under such loan agreement or a credit facility in support of such loan agreement, provided the following conditions are met:

- (1) The aggregate principal amount due under such loan agreement does not exceed the aggregate amount of authorized but unissued bonds, or any bond anticipation notes in anticipation of such bonds, under the bond order; and
- (2) The project to be acquired is a purpose for which proceeds of bonds or bond anticipation notes may be expended under the bond order.

(c) Each unit of local government may agree to apply to the payment of a loan agreement any available source or sources of revenues of such unit and, to the extent the generation of such revenues is within the power of such unit, to enter into covenants to take action in order to generate such revenues, provided such agreement to use such sources to make payments or such covenant to generate revenues does not constitute a pledge of the unit's taxing power.

(d) Each unit of local government otherwise having the power of taxation may enter into loan agreements constituting a continuing contract and providing for the making of payments in ensuing fiscal years from any available source or sources of revenues, including the proceeds of taxes realized from the exercise of the unit's power of taxation, appropriated by the unit in its annual budget provided:

- (1) The governing body of such unit shall have appropriated sufficient funds to pay any amount to be paid under the loan agreement in the fiscal year in which such contract is entered into, this appropriation to be made prior to the entering into of the loan agreement;
- (2) There is included in the loan agreement a provision automatically cancelling the loan agreement in the event the governing body of the unit decides not to appropriate funds to make payment in an ensuing fiscal year in which event the obligation of the unit to make any future payments in any ensuing fiscal year shall cease;
- (3) No deficiency judgment requiring the exercise of the unit's power of taxation may be entered against the unit in any action for breach of a contractual obligation authorized by this subsection; and
- (4) The taxing power of the unit is not pledged to secure any payments to be made pursuant to the loan agreement and the Board shall have agreed that it has no right to require the exercise of a unit's power of taxation to secure such loan agreement.

No loan agreement may contain a nonsubstitution clause which restricts the right of a unit to replace or provide a substitute for any project financed pursuant to the loan agreement.

(e) The obligation of a unit of local government with respect to the sources of revenues authorized by subsections (c) and (d) of this section shall be specifically identified in the proceedings of the governing body authorizing the unit to enter into a loan agreement. This loan agreement shall be valid and binding from the date the unit enters into the loan agreement. The sources of payment so specifically identified and then held or thereafter received by a unit, any fiduciary, or the Board shall immediately be subject to the lien of the loan agreement without any physical delivery of such sources or further act. This lien shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against a unit without regard to whether such parties have notice thereof. The proceedings, the loan agreement, or any other document or action by which the lien on a source of payment is created need not be filed or recorded in any manner other than as provided in the Chapter.

Any loan agreement secured by a source or sources of revenue authorized by subsection (b), (c) or (d) of this section may provide additional security by the granting of a security interest in the project financed to secure payment of the purchase money provided by the loan agreement, including a deed of trust on any real property so acquired.

(f) The interest payable by a unit to the Board on any loan agreement may be at such rate or rates, including variable rates, as may be determined by the Local Government Commission with the approval of the governing body of such unit. Such approval may be given as the governing body of such unit may direct, including without limitation, a certificate signed by a representative of the unit designated by the governing body of such unit. The Board may determine that it is necessary that certain provisions in the Board's bonds or notes be reflected, in similar terms, in loan agreements, so that if it is necessary to vary the interest rate or call the principal prior to maturity of certain of the Board's bonds or notes the Board will have the power to effect a similar variation in interest rate or a similar call prior to maturity of certain loan agreements. Accordingly, in fixing the details of a loan agreement, the governing body of such unit may provide that a loan agreement be:

- (1) Made payable from time to time on demand or tender for purchase by the Board, provided a credit facility supports such a loan agreement. A credit facility is not required if the governing body of such unit specifically determines that a credit facility is not required upon a finding and determination by the governing body that the absence of a credit facility will not affect the unit's ability to make payments on demand or tender, and will not materially and adversely affect the financial position of the unit and the entering into of the loan agreement at a reasonable interest cost to the unit;
  - (2) Additionally supported by a credit facility;
  - (3) Made subject to redemption or a mandatory tender for purchase by the unit prior to maturity; and
  - (4) Bear interest at a rate or rates that may vary for such period or periods of time, all as may be provided in the proceedings of the governing body providing for the entering into of the loan agreement, including, without limitation, such variation as may be permitted pursuant to a par formula.
- (g) As used in this section:
- (1) "Credit facility" means an agreement entered into by the unit of local government with a bank, savings and loan association, or other banking institution; an insurance company, reinsurance company, surety company or other insurance institution; a corporation, investment banking firm or other investment institution; or any financial institution providing for prompt payment of all or any part of the principal or purchase price (whether at maturity, presentment, or tender for purchase, redemption, or acceleration),

redemption premium, if any, and interest on any loan agreement payable on demand or tender by the Board, in consideration of the unit agreeing to repay the provider of such credit facility in accordance with the terms and provisions of the agreement; the provider of any credit facility may be located either within or without the United States of America.

(2) "Par formula" shall mean any provision or formula adopted by the unit to provide for the adjustment from time to time, of the interest rate or rates borne by any loan agreement, including:

- a. A provision for such adjustment so that the purchase price of such loan agreement in the open market would be as close to par as possible.
- b. A provision providing for such adjustment based upon a percentage or percentages of a prime rate or base rate, which percentage or percentages may vary or be applied for different periods of time.
- c. A provision providing for such adjustment based upon the adjustments of the interest rate or rates of the Board's bonds and notes, or
- d. Such other provision as the unit may determine to be consistent with this Chapter and will not affect the unit's ability to pay the principal of and the interest on any loan agreement, and will not materially and adversely affect the financial position of the unit and the entering into of the loan agreement at a reasonable interest cost to the unit.

(h) Any loan agreement may provide for an acceleration of the repayment schedule. (1989, c. 756, s. 1; 2011-266, s. 1.26(c).)